

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PHIGENIX, INC.
Petitioner

v.

IMMUNOGEN, INC.
Patent Owner

Case IPR2014-00676
Patent 8,337,856 B2

IMMUNOGEN, INC.'S MOTION TO SEAL

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Patent Trial and Appeal Board
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I. Introduction

In conjunction with filing its Opposition to Phigenix's Motion to Exclude, Patent Owner, ImmunoGen, is also filing this Motion to Seal. Pursuant to the Default Protective Order, entered into this proceeding on April 30, 2015, ImmunoGen moves to seal exhibits filed in connection with ImmunoGen's Opposition to Phigenix's Motion to Exclude. Specifically ImmunoGen seeks to seal Exhibits 2347 and 2348. ImmunoGen certifies that the parties have conferred in good faith regarding this motion, and Petitioner's counsel has advised that Phigenix will not oppose this motion.

II. Argument

In determining whether to grant a Motion to Seal, the Board must find "good cause" and "strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." 37 C.F.R. § 42.54(a); 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). As laid out in the *Office Trial Practice Guide*, the Board identifies confidential information in a manner "consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information." 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

ImmunoGen has designated Exhibits 2347 and 2348 as for "the Board and Parties' Eyes Only." These exhibits relate to marketing and sales-related

proprietary information. The raw data contained within the designated exhibits is used by ImmunoGen's economic expert (Jarosz; Ex.2131), whose testimony relies upon the underlying information sought to be kept under seal. The public has access to summaries of this data as part of ImmunoGen's expert testimony and Exhibits 2240-44, 2256, 2319 & 2320– which remain unsealed. Such access should adequately fulfill the needs of the public to maintain a complete and understandable file history, while still protecting proprietary information.

III. Conclusion

For the reasons stated above, ImmunoGen respectfully requests that the Board seal and protect the proprietary information in Exhibits 2347 and 2348. ImmunoGen further respectfully requests that the Board seal and protect the proprietary information in these exhibits until such time as it receives and rules on this motion.

Respectfully submitted,
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Date: June 18, 2015
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CERTIFICATION OF SERVICE (37.C.F.R. §§ 42.6(e), 42.105(a))

The undersigned hereby certifies that the above-captioned IMMUNOGEN, INC.'S MOTION TO SEAL was served in its entirety on June 18, 2015, upon the following parties via electronic mail:

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